

House File 657 - Reprinted

HOUSE FILE 657
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 426)

(As Amended and Passed by the House March 21, 2023)

A BILL FOR

1 An Act relating to the preservation of biological evidence
2 collected in relation to a criminal investigation, testimony
3 by an incarcerated witness, and postconviction access to
4 investigative files in a criminal case.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 DIVISION I

2 PRESERVATION OF BIOLOGICAL EVIDENCE IN CRIMINAL INVESTIGATIONS

3 Section 1. Section 81.1, Code 2023, is amended by adding the
4 following new subsections:

5 NEW SUBSECTION. 01. "*Agency*" means any governmental or
6 public entity within the state and its officials or employees
7 including but not limited to law enforcement agencies,
8 county attorney offices, courts, public hospitals, the state
9 criminalistics laboratory or similar qualified laboratory, and
10 any other entity or individual charged with the collection,
11 storage, or retrieval of biological evidence.

12 NEW SUBSECTION. 1A. "*Biological evidence*" means
13 any item that contains blood, semen, hair, saliva, skin
14 tissue, fingernail scrapings, bone, bodily fluids, or other
15 identifiable biological material that was collected as part
16 of a criminal investigation or may reasonably be used to
17 incriminate or exculpate any person for the offense. This
18 applies to identifiable biological material that is cataloged
19 separately or is present on other evidence including but not
20 limited to clothing, ligatures, bedding or other household
21 materials, drinking cups, or cigarettes.

22 NEW SUBSECTION. 1B. "*Custody*" means a person who has
23 been arrested, is currently incarcerated, or has been civilly
24 committed.

25 Sec. 2. NEW SECTION. 81.5A **Preservation of biological**
26 **evidence.**

27 1. Except as provided in section 81.58 concerning the
28 destruction of biological evidence and section 709.10
29 concerning the gathering and preservation of sexual abuse
30 evidence collection kits, all biological evidence collected
31 involving a class "A" or class "B" felony in an agency's
32 possession or control shall be preserved and stored by the
33 agency as follows:

34 a. For cases resulting in a conviction or a deferred
35 judgment, biological evidence shall be retained for the latter

1 of either of the following:

2 (1) Twenty years from the date the defendant's conviction
3 becomes final.

4 (2) The period of time that the defendant or a codefendant
5 remains in custody.

6 *b.* Except as provided in section 81.9, for cases not
7 resulting in a conviction, biological evidence shall be
8 preserved and stored until the expiration of the statute of
9 limitations for the alleged offense.

10 *c.* A criminal or juvenile justice agency, as defined in
11 section 692.1, shall retain biological evidence as provided in
12 section 81.13, subsection 2.

13 2. The agency shall retain biological evidence in an
14 amount and a manner sufficient to develop a DNA profile from
15 the biological evidence contained in or include on physical
16 evidence and in a manner reasonably calculated to prevent
17 contamination or degradation of any biological evidence that
18 might be present, subject to a continuous chain of custody,
19 and securely retained with sufficient official documentation
20 to locate the evidence.

21 3. All records documenting the possession, control,
22 storage, and destruction of biological evidence related to a
23 criminal investigation or prosecution of an offense referenced
24 in this section shall be retained.

25 4. Upon written request by a defendant, the agency shall
26 prepare an inventory of biological evidence relevant to the
27 defendant's case that is in the custody of the agency.

28 5. If evidence was destroyed in accordance with section
29 81.5B through a court order or other written directive,
30 the agency shall provide the defendant with a copy of the
31 documentation showing adherence with this section, the court
32 order, or the written directive.

33 6. The agency shall not be required to preserve physical
34 evidence on which biological evidence is found that is of such
35 a size, bulk, or physical character as to render retention

1 impracticable. When such retention is impracticable, a portion
2 of the physical evidence likely to contain biological evidence
3 shall be removed in a quantity sufficient to permit future DNA
4 testing before returning or disposing of the remainder of the
5 physical evidence.

6 7. Biological evidence shall not be destroyed when a
7 codefendant, convicted of the same crime, remains in custody,
8 and the agency shall preserve the biological evidence until all
9 codefendants are released from custody.

10 8. To comply with the preservation requirements described
11 in this section, an agency may do the following:

12 a. Retain the biological evidence.

13 b. If a continuous chain of custody can be maintained,
14 transfer the biological evidence to the custody of another
15 agency which will maintain the evidence.

16 9. This section shall not be construed to require the
17 state or any other entity to pay for or require the testing of
18 biological evidence not otherwise required by another provision
19 of federal or state law.

20 Sec. 3. NEW SECTION. 81.5B Destruction of biological
21 evidence.

22 Except as provided in section 709.10 concerning the
23 gathering and preservation of sexual abuse evidence collection
24 kits, an agency may destroy or dispose of DNA samples before
25 the period required in section 81.5A expires if all of the
26 following apply:

27 1. No other provision of federal or state law requires the
28 agency to preserve the biological evidence.

29 2. a. The agency sends a notice of intent to dispose
30 of biological evidence by certified mail, return receipt
31 requested, or by a delivery service that provides proof of
32 delivery, to the following:

33 (1) Any victim as defined in section 915.10.

34 (2) Any individual who remains in custody based on a
35 criminal conviction related to the biological evidence.

1 (3) The private attorney or public defender of record for
2 each individual related to the biological evidence.

3 (4) If applicable, the prosecuting agency responsible for
4 the prosecution of each individual relating to the biological
5 evidence.

6 (5) If applicable, the office of the attorney general.

7 b. The notification of intent to dispose of biological
8 evidence shall include that the evidence may be destroyed one
9 hundred eighty days after the date on which the agency received
10 proof of delivery of the notice unless the notified party does
11 either of the following:

12 (1) Files an application for DNA profiling under section
13 81.11.

14 (2) Submits a written request to the agency that the
15 biological evidence be retained.

16 Sec. 4. NEW SECTION. 81.5C Noncompliance with preservation
17 requirements.

18 1. Following a request to produce biological evidence, an
19 agency that is unable to produce biological evidence that is
20 required to be preserved under section 81.5A shall provide an
21 affidavit describing the efforts taken to locate the biological
22 evidence and affirm that the biological evidence could not be
23 located.

24 2. If the court finds that biological evidence was willfully
25 not preserved in accordance with section 81.5A, the court may
26 conduct a hearing and order appropriate remedies.

27 DIVISION II

28 INCARCERATED WITNESS TESTIMONY

29 Sec. 5. NEW SECTION. 804A.1 Definitions.

30 As used in this chapter, unless the context otherwise
31 requires:

32 1. "Benefit" means any plea bargain, bail consideration,
33 reduction or modification of sentence, or any other leniency,
34 immunity, financial payment, reward, or amelioration of current
35 or future conditions of a sentence that is requested, provided,

1 or will be provided in the future in connection with, or in
2 exchange for, the testimony of a incarcerated witness.

3 2. "*Incarcerated witness*" means a person who provides
4 testimony, or who intends to provide testimony, during a
5 criminal prosecution regarding statements made by a suspect or
6 defendant while both the witness and the suspect or defendant
7 were incarcerated, and who has requested, has been offered, or
8 may in the future receive a benefit in connection with such
9 testimony. "*Incarcerated witness*" does not include a person who
10 is a confidential informant, codefendant, percipient witness,
11 accomplice, or coconspirator in the criminal prosecution.

12 Sec. 6. NEW SECTION. 804A.2 Transparency in the use of
13 incarcerated witness testimony.

14 1. In any criminal prosecution, not less than ninety days
15 prior to a trial, the prosecuting attorney shall disclose its
16 intent to introduce the testimony of an incarcerated witness
17 regarding statements made by a suspect or defendant, while such
18 witness and suspect or defendant were both incarcerated. The
19 prosecuting attorney shall provide to the defense all of the
20 following:

21 a. The criminal history of the incarcerated witness,
22 including any pending or dismissed criminal charges.

23 b. The incarcerated witness's cooperation agreement and any
24 benefit that has been requested by, provided to, or will be
25 provided in the future to the incarcerated witness.

26 c. The contents of any statement allegedly given by the
27 suspect or defendant to the incarcerated witness and the
28 contents of any statement given by the incarcerated witness
29 to law enforcement regarding the statements allegedly made by
30 the suspect or defendant, including the time and place such
31 statements were given.

32 d. Any information regarding the incarcerated witness
33 recanting testimony or statements, including the time and place
34 of the recantation, the nature of the recantation, and the
35 names of the people present at the recantation.

1 e. Any information concerning other criminal cases in which
2 the testimony of the incarcerated witness was introduced by a
3 prosecuting attorney regarding statements made by a suspect or
4 defendant, including any cooperation agreement and any benefit
5 that the incarcerated witness received in such case.

6 2. The court may permit the prosecuting attorney to
7 comply with the provisions of this section after the time
8 period provided in subsection 1 if the court finds that the
9 incarcerated witness was not known or the information described
10 in subsection 1 could not be discovered or obtained by the
11 prosecuting attorney exercising due diligence within the time
12 period.

13 3. If the court finds that disclosing the information
14 described in subsection 1 is likely to cause bodily harm to the
15 incarcerated witness or family members or associates of the
16 incarcerated witness, the court may do any of the following:

17 a. Order that such evidence be viewed only by the defense
18 counsel and not by the defendant or others.

19 b. Issue a protective order.

20 4. If the prosecuting attorney objects to the disclosure
21 of any information described in this section, the prosecuting
22 attorney may submit the information to the court for review.
23 Upon review of the information, the court may permit the
24 prosecuting attorney to withhold any information the court
25 finds is not required to be disclosed in accordance with the
26 Iowa rules of evidence or the Constitution of the United
27 States.

28 Sec. 7. NEW SECTION. 804A.3 Pretrial hearing —
29 incarcerated witness testimony.

30 1. In a criminal prosecution in which the prosecuting
31 attorney intends to introduce the testimony of an incarcerated
32 witness, upon motion of the defendant, the court shall conduct
33 a pretrial hearing to determine whether the incarcerated
34 witness's testimony exhibits reliability and is admissible
35 based on the following factors:

1 *a.* The extent to which the incarcerated witness's testimony
2 is confirmed by other evidence.

3 *b.* The specificity of the testimony.

4 *c.* The extent to which the testimony contains details that
5 would be known only by the perpetrator of the offense.

6 *d.* The extent to which the details of the testimony could be
7 obtained from a source other than the suspect or defendant.

8 *e.* The circumstances under which the incarcerated witness
9 provided the information to the prosecuting attorney or a law
10 enforcement officer, including whether the incarcerated witness
11 was responding to leading questions.

12 2. If the prosecuting attorney fails to show by a
13 preponderance of the evidence that an incarcerated witness's
14 testimony is reliable, the court shall exclude the testimony at
15 trial.

16 Sec. 8. NEW SECTION. 804A.4 Tracking the use of
17 incarcerated witness testimony.

18 1. A prosecuting attorney's office shall maintain a central
19 record containing all of the following:

20 *a.* Any case known to the prosecuting attorney in which
21 testimony by an incarcerated witness was introduced or was
22 intended to be introduced by a prosecuting attorney regarding
23 statements made by a suspect or defendant and the substance of
24 such testimony.

25 *b.* Any benefit known to the prosecuting attorney that was
26 requested by, provided to, or will be provided in the future to
27 an incarcerated witness in connection with testimony provided
28 by the witness.

29 2. Each prosecuting attorney's office shall forward the
30 information described in subsection 1 to the division of
31 criminal investigation of the department of public safety. The
32 division shall maintain a statewide database containing the
33 information forwarded pursuant to this section. The database
34 and all central records described in subsection 1 shall be
35 accessible only to prosecuting attorneys and shall otherwise

1 remain confidential and not subject to open records requests.

2 3. If an incarcerated witness receives any benefit in
3 connection with offering or providing testimony against a
4 defendant, the prosecuting attorney shall notify any victim
5 connected to the crime for which the witness was incarcerated.

6 DIVISION III

7 POSTCONVICTION ACCESS TO INVESTIGATIVE FILES IN CRIMINAL CASES

8 Sec. 9. NEW SECTION. 701.13 Postconviction file access —
9 discoverable materials.

10 1. For purposes of this section, "*file*" means all papers,
11 documents, statements, photographs, or tangible objects in
12 the possession, custody, or control of the state including
13 any results or reports of physical or mental examinations and
14 of scientific tests or experiments made in connection with a
15 particular criminal case.

16 2. Except as provided in subsection 3, a prosecuting
17 attorney shall make available to a defendant who has been
18 convicted of a felony or an aggravated misdemeanor, any
19 file in the possession of a law enforcement agency, county
20 attorney, or the attorney general in this state involved in
21 the investigation of any felony or aggravated misdemeanor
22 committed by the defendant relating to the prosecution of the
23 defendant that the defendant was entitled to at the time of the
24 defendant's trial. Nothing in this subsection shall require
25 the disclosure of the content of an attorney work product.

26 3. In all criminal cases involving a conviction for a felony
27 or an aggravated misdemeanor, all of the following shall apply:

28 a. Except as provided in subsection 4, a defendant's
29 previous trial or appellate attorney shall securely retain a
30 copy of the defendant's file for seven years after completion
31 or termination of representation of the defendant or until the
32 completion of the defendant's term of imprisonment, whichever
33 occurs first. An electronic copy is sufficient only if an
34 entire file can be digitally copied and preserved.

35 b. A defendant's file may be maintained by electronic,

1 photographic, or other media provided that printed copies may
2 be produced and the records are readily accessible to the
3 defendant's previous trial or appellate attorney.

4 *c.* A defendant's previous trial or appellate attorney shall
5 make available to the defendant or the defendant's current
6 attorney the complete file relating to the prosecution of the
7 defendant.

8 4. *a.* A defendant's previous trial or appellate attorney
9 may destroy the defendant's file prior to the end of the term
10 of retention described in subsection 3 if the attorney receives
11 written or electronically recorded consent from the defendant.
12 The written or electronic record of the consent to destruction
13 shall be maintained by the attorney for a period of at least
14 six years after completion or termination of representation or
15 the end of the defendant's sentence, whichever occurs first.

16 *b.* Items in the file of monetary value shall not be
17 destroyed.

18 *c.* A defendant's previous trial or appellate attorney
19 destroying a file pursuant to this subsection shall securely
20 store items of monetary value or deliver such items to the
21 state unclaimed property agency.

22 *d.* The file shall be destroyed in a manner that preserves
23 client confidentiality.

24 5. A defendant's previous trial or appellate attorney shall
25 not destroy a file pursuant to subsection 4 if the attorney
26 knows or reasonably should know any of the following:

27 *a.* A legal malpractice claim is pending related to the
28 representation.

29 *b.* A criminal or other governmental investigation is pending
30 related to the representation.

31 *c.* A complaint is pending before the Iowa attorney
32 disciplinary board related to the representation.

33 *d.* Other litigation is pending related to the
34 representation.

35 6. If a prosecuting attorney has a reasonable belief that

1 allowing inspection of any portion of the defendant's file by a
2 defendant's current attorney would place a person in imminent
3 danger, the prosecuting attorney may submit any portion of
4 the file so identified for inspection by the court by filing
5 a motion for a protective order with the court of conviction.
6 If upon examination of the file the court finds that the
7 submitted portion of the file would not assist the defendant
8 in investigating, preparing, or presenting a motion for any
9 appropriate relief, the court may in its discretion allow the
10 prosecuting attorney to withhold that portion of the file.

11 7. A defendant, the defendant's current attorney,
12 investigator, expert, consulting legal counsel, or other agent
13 of the attorney representing the defendant shall not disclose
14 to a third party any file received from the prosecuting
15 attorney under this section that is prohibited from public
16 disclosure unless any of the following apply:

17 a. A court orders the disclosure of the file upon a showing
18 of good cause after notice and a hearing to consider the
19 security and privacy interests of a victim or witness.

20 b. The file has already been publicly disclosed.

21 8. The actual costs involved in the examination or copying
22 of the disclosed file pursuant to this section shall be
23 reimbursed by the defendant.

24 9. This section does not require the retention of any file
25 not otherwise required by law or court order.